

U.S. Consumer Product Safety Commission



A Working Model for Retailer Reporting Under Section 15(b)

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This information has not been reviewed by, and may not necessarily reflect the views of, the Commission.

Outline of Meeting

- Section 15 basics
- Description of the Working Model
 - What Wal-Mart is doing
 - What CPSC staff is doing
- Benefits of the Working Model
- Questions and answers
- Adaptability of the Model

Section 15 Reporting

- Section 15(b) of the Consumer Product Safety Act requires companies to report to CPSC “immediately” if they obtain information raising safety concerns about products they make or sell
- The reporting requirement applies to four types of safety concerns

Four Types of Safety Concerns

- Product fails to comply with a mandatory safety standard or ban under the CPSA
- Product fails to comply with certain voluntary standards
- Product contains a defect which could create a “substantial product hazard”
- Product creates an “unreasonable risk”

Substantial Product Hazard

- “Substantial product hazard” exists if a product defect creates a *substantial risk of injury*

BUT:

- Report is required if firm obtains information which “reasonably supports the conclusion” that product “contains a defect which *could* create a substantial product hazard”

Substantial Product Hazard

- Probably most ambiguous area
- Defect is threshold question
 - Manufacturing defects (doesn't meet specs)
 - Design defects
 - Inadequate warnings, assembly instructions
 - Safety device malfunctions
- Design changes raise issue

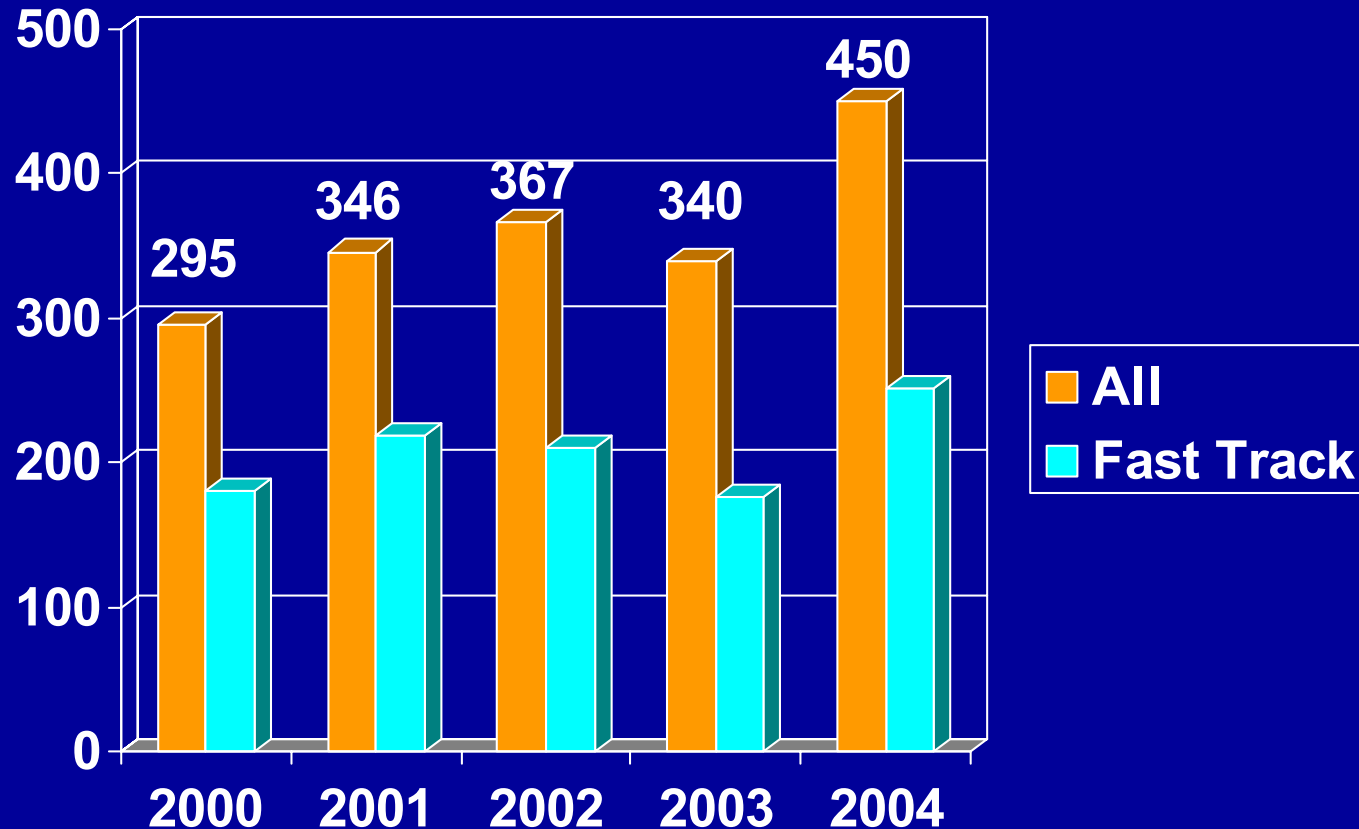
Substantial Product Hazard

- Part 1115 Guidelines
- Most defects could present a substantial product hazard if [1] the public is exposed to significant numbers or [2] if the possible injury is serious *or* likely
- Since the extent of exposure and/or seriousness or likelihood of injury are not known when defect first appears, firms urged to “report when in doubt”

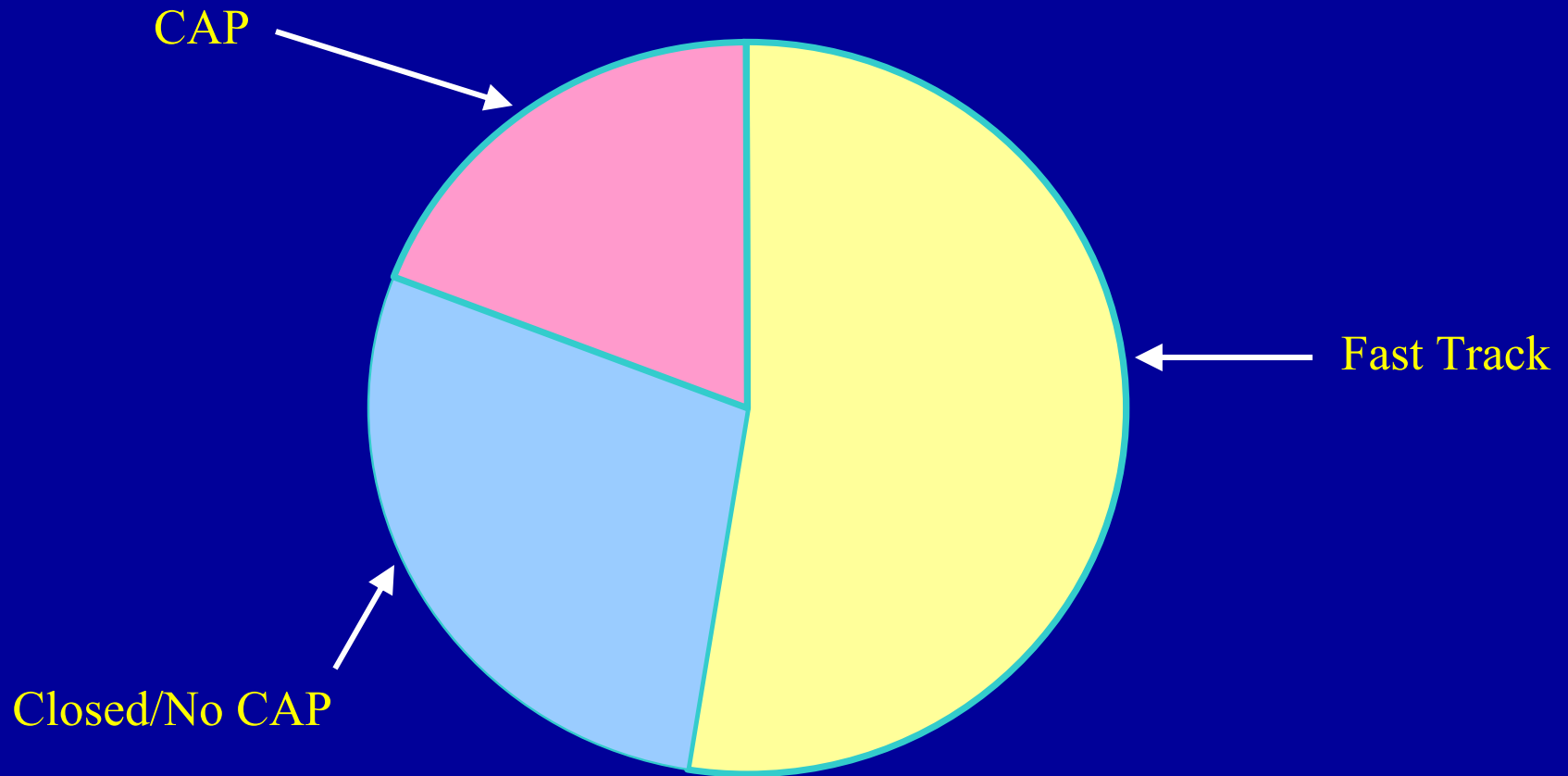
How Quickly Is Report Required?

- Must report “immediately” once information “reasonably supports the conclusion” that safety issue exists
- “immediately” means within 24 hours, but ten days to conduct investigations
- Phrase “reasonably supports conclusion” is intended to require reporting even when no final determination is possible

Section 15 Reports by Fiscal Year



Disposition of Section 15 Reports FY 2003



What Wal-Mart Is Doing

- Sends CPSC detailed information on customer complaints and other incidents in a spreadsheet format once a week
- Gives notice of each item to suppliers
- Provides “Full Report” or supplemental information on request
- Separately reports product withdrawals
- Seeks “Fast Track” treatment as it considers appropriate

Sources of Wal-Mart Incident Information

- Customer hotline (1-800 Wal-Mart)
- Input from stores
 - Merchandising hotline
 - Store Manager/District Manager hotline
 - Intranet
- Correspondence from consumers
- Product claims
- Lawsuit information
- CPSC Clearinghouse letters/FOI requests

Information Processing

- Wal-Mart Product Safety Team key-word searches 4,000-6,000 calls per day
- All sources of product safety information are added to initial report spreadsheet
- For each entry in the initial report spreadsheet, Team provides 48 separate columns of information
- Team classifies hazard and determines whether an incident is “triggered”

Information Being Submitted (1)

- Source of Information (customer, store)
- Claim number
- Date reported to Wal-Mart
- Customer info (name, address, phone)
- Store where sold
- Incident date
- Supplier info (name, address, phone)
- Product info (name, description, model #)

Information Being Submitted (2)

- Product location
- Purchase date
- Universal Product Code (UPC)
- Damages claimed per store report
- Product assertions from claimant
- Failed part
- Primary hazard (from CPSC staff table)
- Date tendered to supplier

Information Being Submitted (3)

- Injury (Y/N?)
- Medical treatment sought (Y/N?)
- Age/sex of injured
- Retail price
- Date Wal-Mart began selling product
- Quantity sold prior two years to date
- Quantity in Wal-Mart stores and warehouses

Information Being Submitted (4)

- Whether Wal-Mart is direct importer
- For direct imports, number of claims for same UPC and search period covered
- Action taken by Wal-Mart safety team
- Number of claims previously reported for same UPC and search period covered
- Whether triggered (CPSC staff table)
- Trigger type

Volume of Information Submitted

- Over last twelve months, Wal-Mart has submitted info on over 3,000 incidents
- Compare number of section 15 reports from retailers in FY 2002 = 24; FY 2003 = 20.
- Compare number of consumer complaints in FY 2004 on CPSC hotline = 3,618; on internet = 6,525

Staff Evaluation

- As staff became familiar with Wal-Mart incident information, became clear that it was valuable to CPSC staff, both Epidemiology and Compliance
- Staff focused on developing a two-tier approach: keep flow of all incident info to CPSC, but flag some incidents for priority review by Compliance

Two-Tier Concept

- Basic tool is § 15 “trigger”
- Purpose of trigger is to distinguish incidents of primary interest to Compliance from all others
- Spreadsheet would show which incidents are triggered for Compliance attention

Types of Triggers

- Automatic triggers
 - Certain injuries regardless of hazard type
 - Certain hazards regardless of injury severity
- Cumulative triggers
 - Recurring hazard from “same product”
 - Multiple injuries from “same product”

Automatic Triggers (1)

Certain Injuries Regardless of Hazard Type

- “sought medical treatment”
- “missed more than a full day of work/school”
- “died”

Automatic Triggers (2)

Certain Hazards Regardless of Injury Severity:

- “electrocution/shock”
- “entrapment/strangulation” plus “child”
- “choking” plus “child”
- “drowning hazard” plus “child”

Cumulative Triggers (1)

- Recurring Hazard from “Same Product”
- Hazards defined by CPSC staff table
- “Same Product” based on UPC matches
- Currently triggered at three occurrences

Cumulative Triggers (2)

- Multiple injuries from “Same Product”
- “Same Product” based on UPC matches
- Currently triggered at five occurrences

CPSC Staff Hazard Table

- Structural failure/breaks/ruptures/leaks
- Fire, burn potential/electrical incident or failure
- Entrapment/caught in object/pinch/crush
- Unsafe operation/assembly/malfunction
- Unstable/tipping hazard
- Choking/suffocation potential
- Chemical exposure/poisoning/ skin irritation
- Sharp edge/point
- Unknown/Other

Product Withdrawals

- Wal-Mart notifies CPSC whenever it removes a product from store or warehouse for possible safety reason
- Withdrawals may be initiated by Wal-Mart or supplier

Other Reporting Issues (1)

- Product fails to comply with CPSC mandatory standard or ban
- Product fails to comply with safety-related product manufacturing specifications
- Product fails to comply with safety-related voluntary standard provisions or listing specs, such as:
 - Hair dryer lacking immersion protection
 - Baby walker lacking stair fall protection

Other Reporting Issues (2)

- Section 37 settlements and verdicts
- Section 102 choking incidents

When Is Information Submitted?

- Once a week for regular spreadsheet
- Within 24 hours for deaths (telephone and e-mail)
- Within 24 hours for product withdrawals (e-mail)

Notice to Suppliers

- Wal-Mart sends letter to supplier for each incident submitted to CPSC
- Letter will distinguish triggered incidents beginning March 2005

What CPSC Staff Is Doing

- Epidemiology inputs data in IPII database
 - May launch In-Depth Investigation (IDI)
 - Treats as new source of hazard information
- Office of Compliance reviews information separately, focusing on triggered incidents
 - Identifies incidents for follow up (some IDIs)
 - Decides whether to seek full report
 - From manufacturer
 - From Wal-Mart
 - Decides whether to seek corrective action

In Depth Investigations

- To date, Epidemiology has assigned 38 IDI's based on Wal-Mart submissions
- Compliance has assigned nearly 200 IDI's

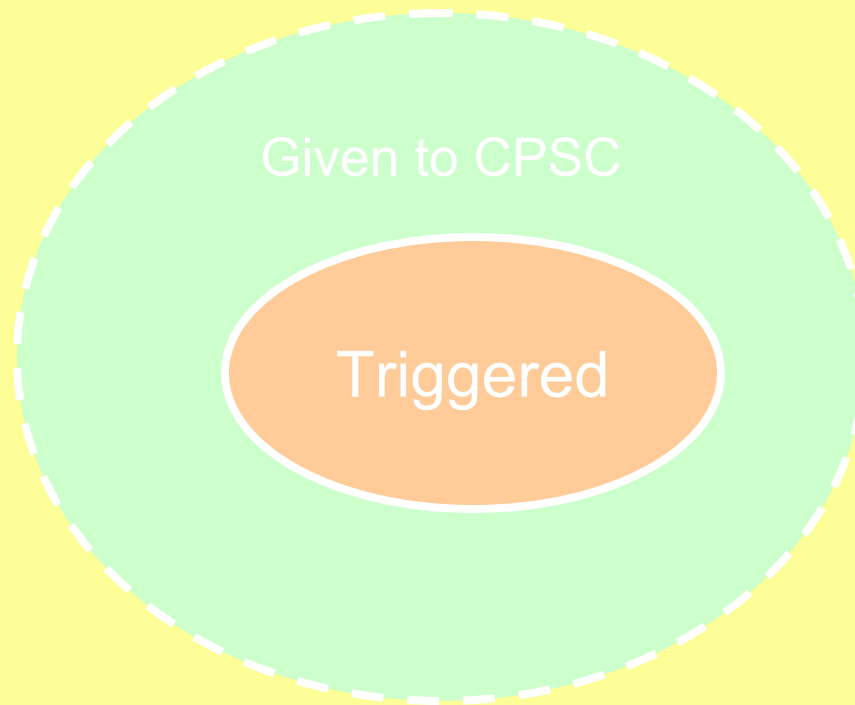
Confidentiality

- Section 6(b) limits disclosure of information that is submitted pursuant to section 15(b)
- FOIA Exemption 4 also protects commercial information voluntarily supplied to agency [*Critical Mass* case controls in D.C. Circuit]

Civil Penalties

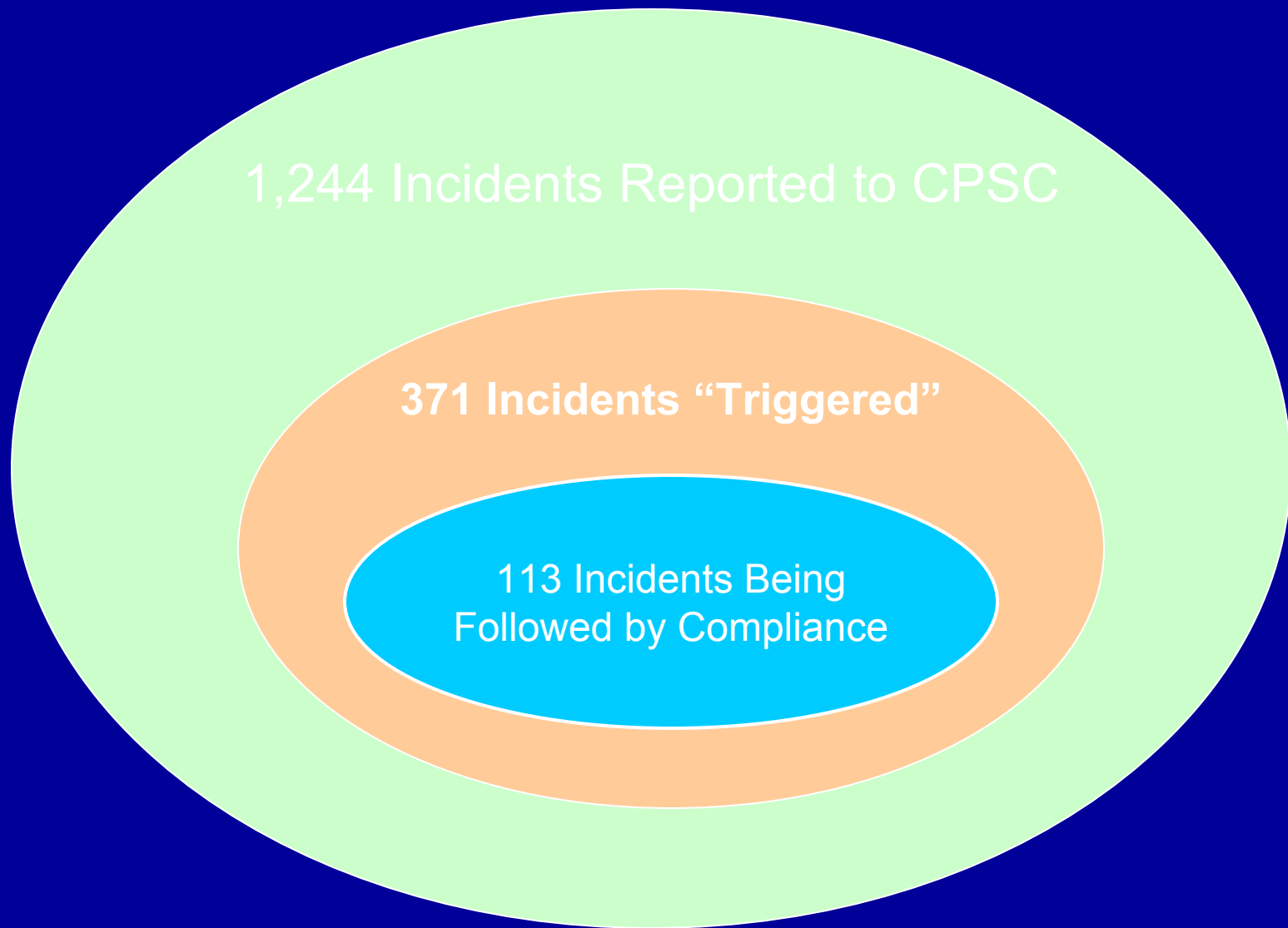
- The Office of Compliance will not seek a civil penalty for failure to report any information actually given to CPSC staff under this model, whether triggered or not.
- A retailer remains subject to civil penalties for violation of section 15 if it knowingly withholds any information or delays providing it to CPSC.

Company Safety Knowledge



Trigger Statistics

- Between 10/02/04 and 1/28/05, Wal-Mart has reported 1,244 incidents
- Wal-Mart triggered 371 incidents
- Compliance review has identified 113 incidents involving 20 firms for follow up
- Compare: total number of section 15 reports in FY 2005 to 1/28/05 = 152



Benefits of the Reporting Model

- Major new source of early warning info
- Quicker identification of emerging hazards
- CPSC staff gains insight into nature of information flowing to retailers
- Hazard coding engages retailer staff
- Emphasis on hazards and corrective actions rather than civil penalties

Next Steps

- Trial Period for Wal-Mart continues through FY 2005
- CPSC staff developing new systems for analysis of retailer reports
- CPSC staff welcomes other retailers to consider trial period
- CPSC staff will consider input from manufacturers on opportunities to clarify section 15 reporting obligations